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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,892	12/21/2000	Jack Gaudie	GDI-2	8232

29847 7590 08/13/2002

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EXAMINER

SCHNIZER, RICHARD A

ART UNIT	PAPER NUMBER
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1635

DATE MAILED: 08/13/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/742,892

Applicant(s)

GAULDIE ET AL.

Examiner

Richard Schnizer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-24 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

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DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-24, drawn to methods and compositions for treating and preventing a disease caused by *P.acnes*, classified in class 514, subclass 44.
- II. Claims 1-15, 17-23, drawn to methods and compositions for treating or preventing a disease caused by *L.monocytogenes*, classified in class 514, subclass 44.
- III. Claims 1-15, 17-23, drawn to methods and compositions for treating or preventing a disease caused by *S.typhimurium*, classified in class 514, subclass 44.
- IV. Claims 1-15, 17-23, drawn to methods and compositions for treating or preventing a disease caused by *N.gonorrhoea*, classified in class 514, subclass 44.
- V. Claims 1-15, 17-23, drawn to methods and compositions for treating or preventing a disease caused by *M.avium*, classified in class 514, subclass 44.
- VI. Claims 1-15, 17-23, drawn to methods and compositions for treating or preventing a disease caused by *M.tuberculosis*, classified in class 514, subclass 44.
- VII. Claims 1-15, 17-23, drawn to methods and compositions for treating or preventing a disease caused by *M.leprae*, classified in class 514, subclass 44.
- VIII. Claims 1-15, 17-23, drawn to methods and compositions for treating or preventing a disease caused by *B.abortus*, classified in class 514, subclass 44.

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IX. Claims 1-15, 17-23, drawn to methods and compositions for treating or preventing a disease caused by *C.albicans*, classified in class 514, subclass 44.

X. Claims 1-15, 17-23, drawn to methods and compositions for treating or preventing a disease caused by *L.major*, classified in class 514, subclass 44.

Claims 1, 11, 19, and 20 link(s) inventions I-X. The restriction requirement between the linked inventions is subject to the nonallowance of the linking claim(s), claims 1, 11, 19, and 20. Upon the allowance of the linking claim(s), the restriction requirement as to the linked inventions shall be withdrawn and any claim(s) depending from or otherwise including all the limitations of the allowable linking claim(s) will be entitled to examination in the instant application.

Applicant(s) are advised that if any such claim(s) depending from or including all the limitations of the allowable linking claim(s) is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable.

In re Ziegler, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Inventions I-X are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are methods and compositions for the treatment or prevention of diseases caused by

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distinct organisms. The inventions require nucleic acids encoding antigens that are derived from these organisms. The methods of treatment or prevention require expression of the antigens and induction of an immune response against the antigens. The composition and methods of any one of the groups cannot be used to treat the disease caused by the pathogen of any of the other groups. Thus the inventions are not disclosed as capable of use together, they have different modes of operation, and different effects.

Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their recognized divergent subject matter, and because each invention requires a separate, non-coextensive search, restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

Any inquiry concerning this communication or earlier communications from the examiner(s) should be directed to Richard Schnizer, whose telephone number is 103-306-5441.


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The examiner can normally be reached Monday through Friday between the hours of 6:20 AM and 3:50 PM. The examiner is off on alternate Fridays, but is usually in the office anyway.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Leguyader, can be reached at 703-308-0447. The FAX numbers for art unit 1632 are 703-308-4242, and 703-305-3014. Additionally correspondence can be transmitted to the following RIGHTFAX numbers: 703-872-9306 for correspondence before final rejection, and 703-872-9307 for correspondence after final rejection.

Inquiries of a general nature or relating to the status of the application should be directed to the Patent Analyst Trina Turner whose telephone number is 703-305-3413.

Richard Schnizer, Ph.D.



JAMES KETTER
PRIMARY EXAMINER